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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/297,774

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Kimio Ueda

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

12/28/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/297,774	Applicant(s) UEDA ET AL.	
	Examiner Michele M. Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/17/11.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 16-20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 16-20 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Language Interpretation

The claim terminology is interpreted in light of the definitions at page 4, 30-31, page 4, line 33-page 5, line 4, page 5, lines 6-8, page 6, lines 3-7, page 10, lines 11-13, page 16, lines 1-2 and 6-9, and page 16, line 12-page 22, line 11, as best understood.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 14, 16, 19 -20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin '206 in view of Buell et al (US 5,569,234).

Claims 14 and 23: See Claim Language Interpretation section supra, herein after also referred to as CLI, and '206 at the abstract, the Figures, col. 1, lines 15-19, col. 1, line 48-col. 2, line 9, col. 2, lines 20-39 and 40-43, col. 2, line 65-col. 3, line 67, col. 4, lines 50-57, col. 5, lines 21-57, col. 6, lines 1-14 and cols.6-7, Examples I and II and Table I, i.e. '206 teaches a disposable absorbent article 20 comprising a backsheet, see col. 4, lines 54-57, comprising a nonwoven web, see, e.g., col. 1, lines 58-60 and 11 and/or 14, positioned at the outermost of the absorbent article and for covering at least

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a portion of the outermost portion of the absorbent article, as best understood, see, e.g., col. 4, lines 54-57 and col. 17, line 66 to col. 18, line 91, wherein the nonwoven web is a spunbonded nonwoven web comprising spunbonded bi-component plastic fibers, see, e.g., col. 3, lines 12 et seq. Claim 14 further requires the backsheet comprise a containment assembly also including a topsheet and an absorbent core disposed therebetween. While '206 at col. 6, lines 6-11 and col. 4, lines 54-57 teach a web which is a backsheet of a diaper/absorbent garment, it does not teach the other components thereof explicitly. However, see Buell et al. (hereinafter '234) at col. 9 – 10 and col. 24, line 59 to col. 25, line 12. The backsheet further comprises a plastic film having an outer-facing surface and a body-facing surface, and the nonwoven web is joined with the outer-facing surface of the plastic film to form a laminate as claimed. The ear panel portions are nonwoven. See also '206 at col. 4, lines 50-52 and col. 5, lines 15-41. Therefore to employ the backsheet nonwoven web of '234 as part of a containment assembly of a diaper/absorbent garment also including a topsheet and an absorbent core therebetween as claimed, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such are known components used in combination with a backsheet to define a containment assembly/a diaper/absorbent garment as claimed and the desire of '206 to define a diaper/absorbent garment.

Claim 16: The bi-component fiber contains a polyethylene and a polypropylene, see, e.g., col. 3, lines 45 et seq.

Claim 19: This claim requires the spunbonded nonwoven web be placed in the disposable absorbent article so that the fiber direction of the spunbonded bi-component

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plastic fibers is aligned with the longitudinal direction of the disposable absorbent article.

It is noted that the claim does not require all the fibers and/or the entirety of each fiber be so aligned nor how such longitudinal direction of the article relates to the cross direction or machine direction of the web. See col. 5, lines 42-57 pf '206, i.e. fibers, including those oriented in machine direction and/or cross-machine direction, are drawn/elongated/oriented/further oriented in the machine direction and or cross-machine direction of the web/backsheet due to stretching forces applied thereto, i.e. at least a portion of at two fibers are aligned as claimed. Note also paragraph 10 infra.

Claim 20: These claims require the spunbonded nonwoven web have a tensile strength of at least 80 gf/cm in the traverse direction of the disposable absorbent article, the nonwoven web has a hand value of Koshi of less than about 16.0 (as set forth on page 13 of the instant application, a feeling related to bending stiffness), a hand value of Shari of from about 0.5 to about 9.5 (as set forth on page 13 of the instant application, a feeling relating to a crisp and rough surface), and a hand value of Fukurami of less than about 5.0 (as set forth on page 13 of the instant application the feeling relating to bulk, richness and good formation), the nonwoven web has a fuzz level of less than about 1.0 mg/cm² (as set forth on page 13 of the instant application, a feeling that is related to skin friendliness). While '206 does not explicitly teach such claimed ranges tested in a like manner, see CLI *supra*, the '206 reference teaches a nonwoven spunbonded web as claimed having a cross-direction tensile strength, a machine direction tensile strength, a fuzz level when tested according to another test. See Examples 1 and II and Table I of '206. See also the cited portions of '206 esp. col. 1, lines 35-37, col. 2, lines

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20-32, col. 6, lines 1-5 and 11-14, and page 13, lines 4 et seq of the instant application, i.e. the same purpose, e.g. nonwoven web which is reduces friction/rubbing/chaffing between web and skin, as that disclosed by Applicant. Therefore, it is the Examiner's first position that there is sufficient factual evidence for one to conclude that the similar material of the '206 reference would also include the claimed ranges when tested in a like manner as the claimed material. In any case, i.e. the Examiner's second position, even if the '206 does not include the claimed range, the general conditions of the claim are disclosed thereby, e.g. nonwoven spundbonded web/backsheet of similar materials for similar purpose, see discussion supra, and it is not inventive, i.e. it would be obvious to one of ordinary skill in the art, to discover the optimum or workable ranges, i.e. the claimed ranges, by routine experimentation, *In re Aller*, 105 USPQ 233 (CCPA 1955). Note the cited portions of '206 recognize that abrasion resistance, tensile strength, hand/drape are result- effective variables, i.e., variables which achieves a recognized result, e.g. , less chafing/friction between web and skin.

Claims 17 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin '206 in view of Buell et al (US 5,569,234) and further in view of Willey et al. '736.

Claim 17: This claim requires the bi-component fibers have a core of the polypropylene and a sheath of the polyethylene. See, e.g., col. 3, lines 48-50 and 63-67 of '206 as well as '736 at, e.g., col. 3, lines 64 et seq and thereby '536 at, e.g., page 2, lines 44-48, 51-52 and Figure 2. Therefore to make the distinct separate phases in the fibers of '206 core and sheath phases as claimed, if not already, would be obvious, *In re Siebentritt*, 54 CCPA 1083, i.e. two equivalents are interchangeable for the desired

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function, express suggestion of desirability not needed to render such substitution obvious, i.e. here the equivalents are interchangeable for the desired function of providing polypropylene/polyethylene, i.e. polyolefin, bicomponent fibers of a nonwoven backsheet of a diaper.

Claim 18: The bi-component fiber has from about 55% to about 95% by weight of the polyethylene, as best understood, see, e.g., col. 3, lines 51-53 of '206 and note MPEP 2131.03 and 2144.05.

Response to Arguments

Applicant's arguments with respect to claims 14, 16 – 20 and 23 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is (571)272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/
Primary Examiner, Art Unit 3761